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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUN 13 1997

Federal Communications Commission
Office of Secretary

MM Docket No. 87-268

In the Matter of)
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Advanced Television Systems and Their Impact)
upon the Existing Television Broadcast Service)
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To: The Commission

PETITION FOR PARTIAL RECONSIDERATION

Acme Television Licenses of Oregon, L.L.C. ("Acme"), the proposed assignee of KWBP-TV in Salem, Oregon (the "Station"), acting pursuant to Section 1.106 of the Commission's rules, hereby petitions for partial reconsideration of the Sixth Report and Order in the above-captioned proceeding, FCC 97-115 (April 21, 1997) (the "DTV Order") to the extent that the DTV Order allocates Channel 33 as the paired DTV channel for the Station's current NTSC Channel 32.¹ DTV Order, Appendix B at 35. Since use of Channel 33 will cause substantial and unnecessary hardship to Acme, it is respectfully requested that Channel 31 be allocated for the Station as previously proposed by the Commission. In support of this request, the following is stated:

¹ On May 15, 1997, the Commission granted the applications authorizing the assignment of the Station's FCC licenses to Acme. File No. BALCT-970304ID. It is anticipated that the assignment will be consummated by June 30, 1997.

1. In the Sixth Further Notice of Proposed Rule Making, the Commission proposed an initial DTV Table of Allotments. Sixth Further Notice of Proposed Rule Making, MM Docket No. 87-268, 11 FCC Rcd 10968 (1996) ("DTV NPRM"). In the DTV NPRM, the Commission proposed to allocate Channel 31 as the Station's paired DTV channel.

2. In the DTV Order, the Commission adopted the Final DTV Table of Allotments which differs considerably from the proposed table. The Commission, without any specific explanation or discussion regarding Channels 31 and 33, reallocated DTV Channel 33 as the Station's paired channel instead of DTV Channel 31. Substantial hardships will be inflicted upon Acme if it is required to activate its DTV operation on Channel 33.

3. Allocation of Channel 33 will require Acme to incur unnecessary delay and expenditures. Current Station operations utilize substandard transmission facilities. Acme therefore expended \$15,000 to obtain a new transmitter and related equipment. Acme was able to obtain the transmitter at that price as part of a development program with the manufacturer. Since the Commission proposed allocations of DTV Channel 31 for the Station in the DTV NPRM, Acme -- believing that there was a high probability that the allocation would be accepted in the Final Table of Allotments -- incurred additional expense so that the new transmission facilities would be compatible with prompt DTV operations on Channel 31. If Acme is instead required to utilize Channel 33 for DTV operations, Acme will, as explained in Mr. Freeman's attached declaration, be forced to

incur an increased expense ranging from \$150,000 to \$250,000 to buy new transmission facilities. Because of the increased price of the equipment as compared to the costs incurred for Channel 31, the economics of the DTV development for the Station will be dramatically altered with no apparent offsetting gain.

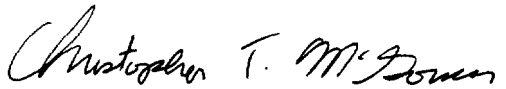
4. Further, the existing facilities of a station to provide DTV service to an area comparable to the existing NTSC coverage area is relevant in deciding the appropriate DTV Channel Allocation. In the DTV NPRM, the Commission said that the allotment process "would attempt to provide DTV coverage areas comparable to existing NTSC coverage areas, taking each station's actual facilities and interference into account." DTV NPRM, 11 FCC Rcd at 10974. In the Station's case, the station's actual facilities warrant having a DTV allotment at Channel 31 rather than at Channel 33.

WHEREFORE, in view of the foregoing, it is respectfully requested that the Commission reconsider its decision to allocate DTV Channel 33 as the paired channel for the Station and, upon such reconsideration, allot Channel 31 for DTV operation.

Respectfully submitted,

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By: 
Lewis J. Paper
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DECLARATION OF DIRK FREEMAN

Dirk Freeman hereby declares as follows:

1. I am an engineer employed by Blair Media ("Blair"). Blair is an association of broadcast engineering and engineering management individuals that have a total of over 57 years of broadcast experience. Over the past sixteen years Blair has provided commercial engineering services to television broadcast stations, domestic and international. Blair principals have been involved in the design, construction or rebuilding of over twenty broadcast properties.

2. Blair is under retainer to Acme Television Holdings, L.L.C. ("Acme") to provide the following services:

- a. Evaluate the technical capability of stations available for purchase;
- b. Provide guidance to the local stations within the group on updating technical facilities for NTSC and DTV operations;
- c. Provide guidance for Acme management in the setting of technical budgets, equipment purchases and building design; and
- d. Evaluate coverage of stations and stations available for purchase for suitability of coverage to meet market goals.

3. At the time the FCC issued the Sixth DTV NPRM, KWBP-TV in Salem, Oregon ("the Station") was in the process of purchasing a new antenna and transmission line system. The Station currently broadcasts at Channel 32. The Station was allocated Channel 31 for DTV broadcast in the Draft Table of Allocations.

4. Subsequent to the issuance of the Sixth DTV NRPM, the Station and its antenna supplier embarked on a program to determine if a slot type UHF antenna could be developed to cover two adjacent channels, in this case Channel 31 and 32. The process was deemed feasible and the station chose to expand the capability of the antenna and transmission line system to allow the dual use of Channel 31 and 32.

5. The design of 31/32 slot type antenna is such that once constructed the bandwidth cannot be changed. While the Station was aware that the allocations

were not Final, the Station principals recognized that the proposed Table of Allotments was well developed, that the purchase of the dual channel antenna was an efficient means to meet the goals of the Commission to make a rapid transition to DTV, and that the risk to develop DTV on Channel 31 was warranted given the costs involved there.

6. When the FCC's Final Report and Order was issued, the allocation table assigned Channel 33 as the DTV companion to Channel 32.

7. With significant assistance of Biby Engineering of Arlington, Virginia, we have examined the possibility of DTV operations on Channel 31/32. While such an action would not be without interference impact to protected contours, preliminary studies on the TA services system indicate a level of 1% or less. While significantly more interference would be received by non-protected services including unbuilt facilities and translators, the cost of mitigating that impact is significantly less than the DTV transitional cost in dollars and time for the Channel 33/32 transmitter system.

8. It would cost the Station an additional expense ranging from \$150,000 to \$250,000 to utilize Channel 33 for DTV transmissions. Based on these factors and the stated desire of the industry and the Commission to make as rapid a transition to DTV as possible, I believe that a reassignment of Channel 31 as Channel 32's DTV companion is in the best interest of the DTV program.

I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read 'Dirk Freeman', written over a horizontal line.

Dirk Freeman

Executed this 13th of June, 1997